

# Superannuation Acts (Further Amendment) Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

- Clause 1 states the purpose of the Bill: to amend certain specified Superannuation Acts to further improve the administration of public sector superannuation schemes and to make superannuation related amendments to certain other Acts and regulations.
- Clause 2 provides the commencement arrangements for the provisions.

### PART 2—AMENDMENT OF COAL MINES (PENSIONS) ACT 1958

- Clause 3 repeals provisions relating to the establishment and operation of the Pensions Tribunal and inserts a provision to have one of the major Superannuation Boards to be nominated as the "paying agent" on behalf of the Consolidated Fund. It also repeals redundant provisions relating to contributions, suspension of pensions, fines and penalties.
- Clause 4 inserts a provision to allow the commutation of a pension, with the lump sum payment to be determined by the Board on the advice of an actuary.
- Clause 5 repeals redundant provisions relating to employment conditions for mine workers.

### PART 3—AMENDMENT OF EMERGENCY SERVICES SUPERANNUATION ACT 1986

- Clause 6 inserts definitions previously in the Emergency Services Superannuation Regulations 1987 and the Emergency Services Superannuation (Police Recruits) Regulations 1987 into the **Emergency Services Superannuation Act 1986**. The Emergency Services Superannuation Regulations 1987 and the Emergency Services Superannuation (Police Recruits) Regulations 1987 are revoked under clause 21.

It also inserts a new standard definition of "**ill-health**" and modifies the current definition of "**operational staff member**".

The new definition of "**ill-health**" enables the Board to pay a benefit equal to the contributor's accrued benefit in cases where the contributor has a continuous or recurring physical or mental incapacity, bodily injury or disease

which does not satisfy the tests under the definition of "**disability**" and the health of the contributor would be adversely affected if he or she returned to or remained in employment with the employer. The Board must also form the view that the contributor can seek alternative employment in the future. This benefit can be used in cases where the contributor through a continuous or recurring impairment in health is unable to maintain the physical or mental requirements to be an operational emergency services employee, even though the impairment does not constitute a disability. The benefit is not payable where the condition has been self-inflicted.

With the demise of State awards, the references to these awards in the definition of "**operational staff member**" are no longer available to classify new employees of the fire and ambulance services. A revised method is introduced under which the Minister declares persons or classes of persons of the fire and ambulance services who can be classified as operational staff members and designated by the employer. Where an employee of the fire and ambulance services does not qualify under the specific provisions of the definition, the employer has the power to designate him or her as an operational staff member and the Board must approve the designated employee. The part of the definition relating to Victoria Police has been expanded to require that the person has completed a course of training which enables the person to undertake general duties as a member of the Force.

The definition of "**prior fund**" is being extended to include the State Superannuation Fund to cover cases where members or pensioners of that Fund transfer or are transferred to the Scheme.

The definition of "**retrenchment**" has been changed to ensure consistency across all of the major public sector defined benefit superannuation schemes with regard to when a redundancy benefit is to be paid from a superannuation scheme. In this new definition, the retrenchment benefit is only payable from the scheme, if the person's services are terminated before the minimum age to receive a retirement benefit and the contributor's employer certifies that the person has been retrenched for the purposes of the **Emergency Services Superannuation Act 1986**.

Clause 7 inserts a description of "**salary**" previously in the Emergency Services Superannuation Regulations 1987 and the Emergency Services Superannuation (Police Recruits) Regulations 1987 into the **Emergency Services Superannuation Act 1986**. The Emergency Services

Superannuation Regulations 1987 and the Emergency Services Superannuation (Police Recruits) Regulations 1987 are revoked under clause 21.

- Clause 8 amends the provision relating to elections, giving the Board the power to determine the procedures for election of member representatives on to the Board. The Emergency Services Superannuation Board Election Regulations 1987 are revoked under clause 21.
- Clause 9 inserts a new standard provision requiring each triennial actuarial review of the Scheme to be tabled in Parliament.
- Clause 10 inserts into the **Emergency Services Superannuation Act 1986** provisions relating to contributions to and benefits from the Emergency Services Superannuation Scheme. The basis of reviewing disability pensioners has been confined to two tests—gainfully employed or no longer disabled. The definition of "gainfully employed" is extended to cover any period of time in which the disability pension was paid. This provision clarifies the contribution rates that can be paid by a contributor until the earlier of age 65 or the time at which the contributor reaches the maximum benefit of 8.40 times his or her salary.

It inserts new provisions releasing the Board from any liability to make any further payments in respect of a former contributor when a lump sum benefit is paid in respect of a death, instead a disability pension on the election of a former contributor nearing age 60 or 65 or when the contributor's service is terminated at the expiration of a temporary pension.

It also inserts a new standard provision to allow the payment of an ill-health benefit to a contributor or former contributor. The Board's determination that a contributor qualifies for an "ill-health" benefit cannot occur without it first assessing whether the contributor qualifies for a disability benefit or a temporary pension, as the case may be. Once that lump sum benefit is paid, the Board is released from any liability to make further payments in respect of that former contributor.

- Clause 11 inserts into the **Emergency Services Superannuation Act 1986** provisions relating to the establishment and operation of ESSPLAN—an accumulation scheme. These provisions are being incorporated from the Emergency Services Superannuation Regulations 1987 which are being revoked in clause 21.

It also inserts new standard provisions to cover entry or continuation of membership of ESSPLAN beyond the age of 65 years, with eligibility for entry or continuation of membership over that age to being restricted to an employee who was at least 60 years of age on 1 July 1990 or is the subject of compulsory employer contributions.

The provision also clarifies that any lump sum benefit (other than a death benefit) payable under Part 3 of the **Emergency Services Superannuation Act 1986** may be transferred into a beneficiary's account under Part 3A of the **Emergency Services Superannuation Act 1986**, unless the contributor or former contributor has made an election to transfer the benefit to another complying superannuation fund or be paid the benefit.

It inserts new standard provisions to enable the transfer of both preserved and non-preserved benefits in to or out of ESSPLAN, providing a member with the entitlement to require the Board to transfer his or her preserved or non-preserved benefits to another other complying superannuation fund. This transfer of the member's preserved benefit can only be exercised during the period that member's participating employer certifies to the Board that the superannuation guarantee shortfall in respect of that member is being paid to another complying superannuation fund. The Board must comply with the member's request and make the transfer after deducting any amounts owing to the Scheme.

- Clause 12 inserts into the **Emergency Services Superannuation Act 1986** a provision relating to an application for a disability benefit.
- Clause 13 repeals a redundant provision relating to moneys owing to the Scheme as a new standard provision is being inserted into the **Emergency Services Superannuation Act 1986** under clause 15.
- Clause 14 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure overseas.
- Clause 15 inserts a new standard provision in relation to the recovery of money owing to the Scheme by a member, contributor, beneficiary, participating employer or any other person, and the rate of interest which the Board may charge on the outstanding amount.
- Clause 16 inserts into the **Emergency Services Superannuation Act 1986** a provision relating to the payment of benefits if a person is incapable.

Clause 17 amends the provision relating to information required by the Board by extending its operation to information for ESSPLAN and inserts into the **Emergency Services Superannuation Act 1986** a provision relating to disclosure of information. It also increases the penalty from 1 penalty unit to 10 penalty units in respect of an offence where a person fails to provide the information sought by the Board.

Clause 18 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit. This provision also covers any preserved component in a beneficiary's account.

Clause 19 repeals redundant provisions and amends other provisions relating to the making of regulations.

Clause 20 removes or amends references to the Emergency Services Superannuation Regulations 1987 and the Emergency Services Superannuation (Election to Contribute) Regulations 1987 which are being revoked in clause 21.

Because the Emergency Services Superannuation (Prescribed Offices) Regulations 1987 are being revoked in clause 21, the definition of "**employee**" is amended by inserting provisions requiring a declaration by the Minister, published in the Government Gazette, to describe offices of the Department of Natural Resources and Environment. A similar mechanism is being inserted for employees of an ambulance service not covered by the **Ambulance Services Act 1986**.

It also inserts a new provision to allow an officer of the Department of Natural Resources and Environment who was a member of the State Superannuation Fund (or the Superannuation Fund) and transferred to the Scheme to elect to transfer, under certain conditions, to the new scheme under the **State Superannuation Act 1988**. A redundant provision relating to the transfer from other superannuation funds is repealed and the commencement date for the ESSPLAN Scheme is inserted.

Clause 21 revokes seven (7) sets of Regulations covering the Emergency Services Superannuation Scheme as a consequence of the insertion of the relevant provisions in these Regulations into the **Emergency Services Superannuation Act 1986**. It also inserts a provision about the interpretation of legislation with regard to the revoked Regulations.

## **PART 4—AMENDMENT OF HOSPITALS SUPERANNUATION ACT 1988**

Clause 22 inserts definitions in the Hospitals Superannuation Regulations 1988 into the **Hospitals Superannuation Act 1988**. These regulations are revoked by clause 34.

The definition of "**contributory benefit**" is amended to clarify to whom it applies.

The definition of "**retrenchment**" has been changed to ensure consistency across all of the major public sector defined benefit superannuation schemes with regard to when a redundancy benefit is to be paid from a superannuation scheme. In this new definition, the retrenchment benefit is payable if the person's service is terminated before the minimum age to receive a retirement benefit and the contributor's employer (defined as a participating institution) certifies that the person has been retrenched for the purposes of the **Hospitals Superannuation Act 1988**.

Clause 23 repeals a redundant provision enabling the Board to operate a Welfare Account for members suffering financial hardship. Any payments or advances formerly made under this provision will be covered by the new arrangements for early release of benefits being inserted under clause 29.

Clause 24 reduces from 12 months to 6 months the maximum period in which the Board must submit to the Minister the report of each triennial actuarial review of the Fund.

Clause 25 inserts the provisions relating to "old scheme" membership together into one Part into the **Hospitals Superannuation Act 1988**. It modifies the definition of "**deferral account balance**" to clarify the types of benefits a former contributor can have in such an account. It includes tables for a member's accruing benefit in the defined benefit scheme in specified periods after 30 June 1993 to clarify interpretation of these provisions in the context of the adjustments for tax under section 51C of the **Hospitals Superannuation Act 1988** and the current provisions of the Commonwealth Superannuation Guarantee (Administration) Act 1992.

The new provision relating to the reduction of a disability pension if the pensioner resumes employment with a participating institution incorporates a modification about when the Board can continue to pay a pension, to comply with Commonwealth Insurance and Superannuation Commission requirements.

- Clause 26 amends provisions relating to the power to declare the new name of a participating institution, a new participating employer, amend the name of existing participating employer or continuation of membership by an individual, delegating the power to make these declarations to the Secretary of the Department of Treasury and Finance.
- Clause 27 inserts provisions relating to leave of absence into the **Hospitals Superannuation Act 1988**.
- Clause 28 inserts the provisions relating to medical classifications into the **Hospitals Superannuation Act 1988**.
- Clause 29 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure overseas.
- Clause 30 inserts provisions into the **Hospitals Superannuation Act 1988** relating to the payment of contributions by an employee and the mode of his or her election for benefit entitlements.
- Clause 31 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit. This provision also covers any preserved component in a beneficiary's account.
- Clause 32 repeals redundant provisions requiring an approval by the Commonwealth Insurance and Superannuation Commission before the early release of benefits can occur.
- Clause 33 removes or amends references to the Hospitals Superannuation Regulation 1988 and omits a redundant definition of "**salary**". The provision restricting the application of the **Hospitals Superannuation Act 1988** in relation to employees who are members of other superannuation schemes is amended by inserting a provision requiring the superannuation schemes to be declared by the Minister, published in the Government Gazette. It repeals a redundant provision relating to eligibility to transfer to a superannuation scheme administered by the Victorian Superannuation Board and amends the provision relating to the making of regulations.
- Clause 34 revokes two (2) sets of Regulations covering the Hospitals Superannuation Fund as a consequence of the insertion of the provisions in these Regulations into the **Hospitals Superannuation Act 1988**. It also inserts a provision regarding the interpretation of legislation with regard to the revoked Regulations.

## **PART 5—AMENDMENTS TO THE LOCAL AUTHORITIES SUPERANNUATION ACT 1988**

Clause 35 amends the definition of "**contributor**" to clarify to whom this definition applies and its purpose.

It inserts a definition of "**disability**" to replace the definition inserted through the **Superannuation Acts (Amendment) Act 1996** which is to be repealed before the commencement date of that definition.

The definition of "**retrenchment**" has been changed to ensure consistency across all of the major public sector defined benefit superannuation schemes with regard to when a redundancy benefit is to be paid from a superannuation scheme. In this new definition, the retrenchment benefit is payable if the person's service is terminated before the minimum age to receive a retirement benefit and the contributor's employer (defined as an "Authority") certifies that the person has been retrenched for the purposes of the **Local Authorities Superannuation Act 1988**.

Clause 36 reduces from 12 months to 6 months the maximum period in which the Board must submit to the Minister the report of each triennial actuarial review of the Fund.

Clause 37 inserts a new provision relating to a temporary benefit entitlement as a result of an agreement reached between the Minister for Finance and the Australian Services Union to cater for a temporary benefit when a contributor does not meet the requirements for a disability benefit.

The maximum duration of this benefit is 2 years and the person receiving the benefit is to be regularly assessed for continuing eligibility for this benefit. The provision provides the options available for the Board for the payment or cessation of payments during and at the end of the period of the temporary benefit.

Clause 38 amends provisions relating to the benefit entitlement on resignation of a contributor to bring these provisions into line with the specified standards for the preservation of certain employee or employer contributions until specified events occur.

Clause 39 amends a provision relating to the power to declare new participating employers or amend the name of existing participating employers, delegating the power to the Secretary of the Department of Treasury and Finance.



Clause 40 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.

Clause 41 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit. This provision also covers any preserved component in a beneficiary's account.

## **PART 6—PARLIAMENTARY SALARIES AND SUPERANNUATION ACT 1968**

Clause 42 amends a provision regarding the delegation of power, function or duty of the Parliamentary Trustee to specifically refer to a Board administering a public sector superannuation scheme. This removes any doubt that the Parliamentary Trustee can delegate to such a Board and that Board can accept the delegation.

The amendment sets 30 June 1996 as the date of the next triennial actuarial review of the Fund and subsequent reviews must occur every 3 years from that date. A consequential amendment is that the target for ensuring that the net assets of the Fund equals the actuary's estimate of accrued liabilities of the Fund is shifted to 30 June 2014—one year earlier than specified in the existing provision.

At each triennial review commencing 30 June 2014, or at an earlier review if the target is achieved earlier, the actuary must recommend equal annual contributions from the Consolidated Fund so that, as far as practicable, the Fund does not have an actuarial surplus or deficit at the next triennial review. The Treasurer must make the contributions recommended by the actuary.

It also includes standard provisions requiring the report for each triennial actuarial review of the Fund, including the one on 30 June 1996, to be submitted to the Minister within 6 months of the review date and for each report to be tabled in Parliament.

Clause 43 inserts provisions to prevent members or former members receiving more than one benefit for the same period of service where the member or former member has chosen to receive benefits calculated under the Commonwealth Parliamentary Contributory Superannuation Act 1948. It inserts provisions to cover members who had a previous period of service that terminated before 1 December 1993 in respect of which benefits were received before choosing to receive benefits calculated under the Commonwealth Act.

- Clause 44 inserts a new standard provision giving the Parliamentary Trustee the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.
- Clause 45 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit. This provision also covers any preserved component of a benefit.

### **PART 7—AMENDMENT OF PORT OF GEELONG AUTHORITY ACT 1958**

- Clause 46 inserts provisions to enable the Port of Geelong Authority Superannuation Fund (PGASF) to be wound up. It requires each remaining contributor to nominate, by 3 February 1997, a complying superannuation fund to which his or her account balance is to be transferred.

Provisions are inserted giving power to the administrators of the PGASF to transfer the contributor's balances to either VICSUPER or LASPLAN, whichever is appropriate, should the contributor fail to nominate a complying superannuation fund. It also inserts provisions requiring the Port of Geelong Authority to be liable for any shortfall in the PGASF to cover administrative costs in the winding up of the PGASF and releases the administrators from any liability in respect of the entitlements of a contributor when the contributor's balance is transferred to a complying superannuation fund.

- Clause 47 is a consequential amendment to the winding up of the Port of Geelong Authority Superannuation Fund.

### **PART 8—AMENDMENT OF PUBLIC SECTOR SUPERANNUATION (ADMINISTRATION) ACT 1993**

- Clause 48 amends a provision relating to the power to declare new participating employers, delegating the power to the Secretary of the Department of Treasury and Finance.
- Clause 49 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.
- Clause 50 repeals redundant provisions relating to the Holmesglen Construction Superannuation Plan.

Clause 51 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit. This applies to any preserved component in a beneficiary's account.

## **PART 9—AMENDMENT OF STATE EMPLOYEES RETIREMENT BENEFITS ACT 1979**

Clause 52 amends a standard provision to reduce from 12 months to 6 months the maximum time for the Board to submit to the Minister the report of a triennial actuarial review of the superannuation scheme in the **State Employees Retirement Benefits Act 1979**.

Clause 53 amends a provision relating to a disability benefit entitlement to remove inconsistencies and bring it into line with similar provisions in the other Acts governing public sector defined benefit superannuation schemes.

Clause 54 simplifies the wording of a provision relating to when the Board determines a pensioner is no longer disabled.

Clause 55 repeals a redundant provision relating to the early release of benefits after approval from the Commonwealth Insurance and Superannuation Commission.

Clause 56 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.

Clause 57 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit.

## **PART 10—AMENDMENT OF STATE SUPERANNUATION ACT 1988**

Clause 58 amends the definition of "**resignation**" so that it covers all terminations before the minimum age of retirement except for death, disability or retrenchment. It also amends the definition of "**minimum age for retirement**" to clarify that while a specified group of members have an entitlement to an accrued benefit at an age earlier than 55 part of this accrued benefit may be subject to preservation under the specified standards.

Clause 59 repeals redundant provisions relating to the benefit entitlement to a person who does not become entitled to a pension under the specific Acts that relate to this provision.

- Clause 60 reduce the maximum period from 12 to 6 months in which the Board must submit to the Minister the report of each triennial actuarial investigation of the Fund.
- Clause 61 amends the provisions relating to the pension entitlement of a child of a deceased former contributor. It ensures that the "revised scheme member's pension" is adjusted for movements in the All Capital Cities Index number between the date of first payment of that pension to the pensioner and the date of that person's death before the percentage for each child is applied.
- Clause 62 removes redundant wording referring to marriage.
- Clause 63 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.
- Clause 64 modifies the provision to make employer's contributions to the Fund so to cover the case where a payment of a benefit under section 16A of the **State Superannuation Act 1988** must be made.
- Clause 65 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit.
- Clause 66 inserts a new provision concerning the transfer to the new scheme in the State Superannuation Fund of a person who is eligible to make an election under section 4(1BA) of the **Emergency Services Superannuation Act 1986** and makes that election to transfer. The person's resignation and accrued retirement benefit for the purposes of the new scheme are calculated under Part 3 of the **Emergency Services Superannuation Act 1986** and, if the benefits under that Part have not been adjusted under section 25A, these benefits must be adjusted under section 71B of the **State Superannuation Act 1988**.
- The person becomes a member of the new scheme. The Emergency Services Superannuation Board is required to transfer to the State Superannuation Fund assets equal to the liability for each transferred officer and the Board is released from any further liability once the transfer occurs. No taxes or charges are payable on the assets transferred.
- Clause 67 repeals redundant provisions relating to the early release of benefits after approval from the Commonwealth Insurance and Superannuation Commission.

## **PART 11—AMENDMENT OF SUPERANNUATION (PORTABILITY) ACT 1989**

- Clause 68 amends the provision relating to the entitlement of a deferred retirement benefit to provide that the timing and payment of retirement benefit is to be in accordance with the governing rules of the statutory superannuation scheme to which the member belonged at the time he or she elected to take the deferred benefit option.
- Clause 69 amends provisions relating to the entitlement of a deferred benefit because of death or disability to provide that the decision about the payment of the benefit is to be accordance with the governing rules of the statutory superannuation scheme to which the member belonged at the time he or she elected to take the deferred benefit option.
- Clause 70 is a consequential amendment to simplify the matters the administrators of the statutory scheme must consider about the payment of deferred benefit entitlements.

## **PART 12—AMENDMENT OF TRANSPORT SUPERANNUATION ACT 1988**

- Clause 71 inserts a standard definition of "**child**" and amends the definition of "**resignation**" so that it covers all terminations before the minimum age to receive the retirement benefit except for death, disability or retrenchment.
- Clause 72 amends the date for the triennial actuarial review to bring it into line with the timing of the review required under the **State Superannuation Act 1988**. This change standardises the date for the review of all schemes in the State Superannuation Fund. It also reduces from 12 months to 6 months the maximum period in which the Board must submit to the Minister the report of each triennial actuarial review of the Fund.
- Clause 73 amends a provision relating to disability benefits to correctly identify as to whom this provision applies. It removes a redundant phrase that is not consistent with the Commonwealth retirement incomes policy.
- Clause 74 inserts a new standard provision giving the Board the power to approve early release of benefits in cases of severe financial hardship, on compassionate grounds or permanent departure from Australia.
- Clause 75 inserts a new standard provision to enable the Governor in Council to issue Orders to specify the circumstances in which an early release of benefits may be made and the payment of that benefit.

### **PART 13—MISCELLANEOUS**

- Clause 76 amends the **Equal Opportunity Act 1995** to clarify the effect of the operation of that Act on voluntary early retirement schemes. This change clarifies the Government's intention that the **Equal Opportunity Act 1995** should not prevent employers from offering different voluntary early retirement payments to employees depending on their age and whether they are eligible to receive a retirement benefit from a superannuation fund.
- Clause 77 changes the definition of retrenchment in the Port of Melbourne Authority (Superannuation) Regulations 1989 to bring that superannuation scheme into line with the major public sector defined benefit schemes with regard to when a redundancy benefit is to be paid from a superannuation scheme.
- Clause 78 corrects errors in the year specified.
- Clause 79 repeals the **Superannuation Acts (Amendment) Act 1996**.